IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.362 OF 1990

The State of Maharashtra ...Appellant

vs.

Mustaq Ismail Memon and ors. ...Respondents

Mr.Rajesh More,A.P.P. for State
None for the Respondents.

CORAM: A.S.OKA,J.
DATE : AUGUST 17, 2006.

ORAL JUDGMENT:

1. Heard learned A.P.P. for State. The Respondents-accused were tried for offences punishable under sections 498-A, 323, 504 read with section 34 of the Indian Penal Code. By the impugned Judgment and Order the Respondents-accused persons have been acquitted.

2. When this Appeal from acquittal came up for final hearing on 29th October 2004, this Court issued notice to the complainant. In order dated 15th December 2005 the learned Judge of this Court noted that the learned A.P.P. was not in a position to explain as to why the order of issuing notice to the complainant was passed on 29th October 2004. Therefore, on the same date this court passed an order directing that the Appeal should be placed before the learned Single Judge (V.M.Kanade,J.) who had passed the order dated 29th October 2004. On 6th February 2006 this Appeal came up before the Court (V.M.Kanade,J.). In the order passed on that this Court

noted that notice was issued in order to see whether any compensation can be paid to the original complainant. In the said order this Court recorded the statement made by the learned A.P.P. for State that out of five accused persons, four accused have already expired and the fifth one is completely bedridden as a result of paralytic stroke. A further statement of the learned A.P.P. was recorded that the complainant has received notice of this Court and she was not desirous of appearing in the court. The learned A.P.P. further stated that a statement was given by the complainant accordingly. The said statement was taken on record and it was directed that it was no longer necessary to hear the complainant in the Appeal. Accordingly, the learned Judge directed that the Appeal should be placed before the Hon'ble Chief Justice for the purpose of assigning the same to the appropriate court. Thereafter, the matter appeared before the another Single Judge (Mohite,J.) and was ordered to be placed for final hearing.

3. The case of the prosecution is that the first Respondent is the husband of the complainant. The second Respondent is the mother-in-law of the complainant. The third Respondent is the sister-in-law of the complainant and the fourth and fifth Respondents are the brothers-in-law of the complainant. The marriage between the complainant and the first Respondent was solemnised on 20th June 1986. The allegation is that after two months of their marriage the Respondents asked the

complainant to bring a sum of Rs.5,000/- and a watch from her parents. As the said demand was not complied with, the Respondents started beating the complainant. It is alleged that the Respondent were not providing her food at appropriate time. The Respondents started harassing the complainant as she was not in a position to comply with their demands.

4. On 3rd August 1988 between the 6.00 p.m. to 12.00 in the midnight the Respondents with their common intention of demanding Rs.5000/- and a watch from the complainant's parents abused and assaulted the complainant and she was kept without food for the whole night. Due to such treatment given by the accused persons, the complainant jumped into the river at Yerwada, Pune and tried to commit suicide. The prosecution alleged that the Respondents have committed offences punishable under sections 498-A, 323, 504 r/w section 34 of the Indian Penal Code.

5. The prosecution examined Malika Memon, the complainant, one Hakimbhai Taherbhai-the father of the complainant, one Shakuntala Sitaram Dhere who is allegedly an eye witness who saw the complainant jumping into the river, Dr.Vishnu Laxman Ughade, a Medical Officer attached to Sasoon Hospital,Pune, Akbar Hakimbhai Shaikh- the brother of the complainant, one Mohammed Iqbal Ashrali and the P.S.I. Vishwanath Khandare. The learned Judicial Magistrate (First Class), Cantonment, Pune held that the prosecution has failed to prove the

charges.

6. The learned A.P.P. for the Appellant has taken me through the notes of evidence. He submitted that there is an evidence of eye witness Shakuntala Sitaram Dhere who had seen the complainant jumping into the river. He submitted that the evidence of the complainant clearly shows that the she was compelled by the Respondents to make an attempt to commit suicide by jumping into the river. He submitted that the evidence of the Medical Officer was consistent with the prosecution case. He submitted that the evidence of Medical Officer shows that there were injuries on the person of the complainant. He submitted that the learned Magistrate has failed to appreciate the evidence and he has gone into probabilities. He submitted that if evidence is properly appreciated, it is obvious that only conclusion which can be drawn is of the guilt of the accused persons.

7. I have carefully considered the submissions. The complainant Malika Memon has deposed that two months after the marriage, the Respondents took her to the parents' house and demanded that she should bring Rs.5000/- and a watch from her maternal home. She stated that she stayed at her parent's house for one year. She has made general allegations that during her stay in the matrimonial home, the Respondents used to beat her and they did not provide food to her. She has stated that there was an agreement signed by her husband i.e.

the first Respondent, her brother-in-law Ismail and a Maulana by which the first Respondent agreed that he would not ill-treat her. After the execution of the said agreement she was taken to her matrimonial home. She stated that after she came back to the matrimonial home, accused persons quarrelled with her and they used to demand Rs.5000/- and a watch from her parents. According to her on 3rd August 1988, the accused persons beat her from 6.00 p.m. to 12.00 in the midnight and thereafter, she went to bed. According to her case, next day in the morning at 6.00 a.m. the first Respondent drove her out of the house. Thereafter, she went to Bund Garden near Sadal Baba Darga and tried to commit suicide by jumping into the river. She stated that two persons rescued her from the water and their names were Shakuntala and one Dhere and the said persons took her to the police chowkey. She stated that she lodged complaint at Exh.18 with the police. She stated that she was having injuries on her head, on her stomach and on leg. It is pertinent to note that the complainant has made very general statements without ascribing any particular role to any particular accused. She has not at all stated that as a result of the assault by the accused persons she received injuries on any particular part of her body. It appears that the allegations made by the complainant are very vague and devoid of any material particulars.

8. In the cross examination she stated that she was not aware whether Khardaki river is situated at distance of one

kilometre from her matrimonial home. She stated that she was not aware whether the distance between Sadal Baba Darga and the matrimonial home is about 12 kilometres. She further admitted that in between the two places there are two rivers and one railway crossing. In paragraph No.7 of the cross examination the complainant stated thus :

"7. I know one Khurshid, he resides in Gopichawl Khadki. It is true that I used to reside 7 days in my matrimonial home and 7 days in my maternal home because of my illicit relations with said Khurshid. I cannot say as to why it is not mentioned in my report Exh.18 when I was deserted the accused asked to bring Rs.5000/- and a watch or to die."

9. P.W.No.3 Shakuntala Dhere stated that on 4th August 1988 at about 7.30 a.m. she was purchasing fish on bank of river when she saw one girl jumping into the river. She stated that she called her nephew and both of them took the girl out of river. She stated that she took the girl to her house where the police arrived. In the cross examination she stated that the girl was floating on water. She admitted that the girl was trying to come out of the water but she could not do so. She stated that when the girl was taken out of water, she was dragged out of water by catching hold of her hands. The said witness has not deposed about the existence of any external injuries on the person of the complainant.

10. Dr.Vishnu Ughade, Medical Officer attached to Sasoon Hospital stated that he examined the complainant at 1.45 p.m. on 4th August 1988 and he noticed following injuries on the person of the complainant:

1) tenderness over right elbow joint 2) tenderness over left elbow joint 3) swelling over left knee joint 1/1/2 X 1/10 inch 4) tender over low back 5) unable to open jaw, oscipateal headache

11. He stated that the cause of injuries was due to hard and blunt object. In the cross examination he admitted that the injury No.4 can be possible because of pressure of hands while taking her out of water. He admitted that injury Nos.1 to 3 can be possible if the patient is laid down for taking out water. Injury No.6 was also possible because of drowning. He admitted that injuries No.1 to 3 are possible if pressure is given on the shoulder of the person while taking him out of water. From the said evidence it is difficult to come to the conclusion that the prosecution has established that the injuries were caused due to any assault on the person of the complainant. The evidence of the Medical Practitioner shows that the injuries are possible while dragging the complainant from the river and while applying pressure for taking out water out of her body.

12. The father of the complainant has been examined as P.W.No.2. His evidence is also vague as regards demand of

Rs.5000/- and a watch. He has deposed about execution of agreement by the first Respondent. In the cross examination he was confronted with the statement recorded by the police. He stated that he cannot tell as to why it is not mentioned in his police statement that the first informant told him about the demand of Rs.5000/- and a wrist watch made by the first Respondent. The evidence of P.W.No.3 Shakuntala Dhere will not help the prosecution in establishing the case of commission of offence punishable under section 306 of the said Code. P.W.No.4 is the brother of the first informant. He has deposed about the execution of the agreement at Exh.17. All that he has stated in examination-in-chief is that after two months from the date of marriage ill-treatment was given to his sister and the first Respondent used to make demand. He has vaguely stated that the demand was for some amount and a watch. He has not deposed anything about the alleged ill-treatment given to the first informant and therefore, his evidence has no relevance so far as proof of commission of offence is concerned.

13. Thus, the entire analysis of the evidence shows that the view taken by the learned Trial Judge is a possible view which can be reasonably taken on the basis of the evidence on record. Even assuming that another view is possible to be taken, it is not permissible to interfere in an Appeal against acquittal. There is no merit in the Appeal.

14. Hence, I pass the following order :

. Appeal is dismissed.

JUDGE